

OVERVIEW OF AGRICULTURAL PREFERENCE LAW

State Agencies or Authorities

- The law amends chapter 7 of the General Laws, which governs OSD's procurement process by adding a new section, 23B, directing state agencies or authorities to implement a preference for the purchase of agricultural products from the Commonwealth
- This preference is to be accomplished (1) in advertising for bids, contracts or otherwise procuring products of agriculture by making reasonable efforts to facilitate the purchase of such products of agriculture grown or produced using products grown in the Commonwealth; and (2) purchasing such products, unless the price of the goods exceeds, by more than 10%, the price of products grown or produced using products grown outside of the Commonwealth.

Definition of Agricultural Products

- The agricultural preference applies to products grown in the Commonwealth and those produced using products grown in the Commonwealth,
- the raising of livestock including horses and the keeping of horses as a commercial enterprise,
- the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes,
- bees, fur-bearing animals, and any forestry or lumbering operations

See, G.L. c. 128, sec. 1A

M.G.L. c.30B and Purchases of Massachusetts Agriculture Products

Under \$25,000: A local governmental body may make purchases of Massachusetts agriculture products of less than \$25,000 using "generally accepted business practices." See M.G.L. c.30B, §4(d). The Office of the Inspector General recommends that a governmental body periodically solicit price quotes to ensure that it is receiving favorable prices. A governmental body must keep a record of the procurement and have a written contract if the value of the procurement is \$5,000 or more.

\$25,000 or more: A local governmental body may, by a majority vote, establish a preference to purchase agricultural products, grown or produced as part of a Massachusetts farming operation. If established, a governmental body would state such a preference when advertising for bids or contracts for purchases of agricultural products of \$25,000 or more. A governmental body would award a contract to a vendor providing Massachusetts agricultural products unless the price of such goods exceeds by more than 10 percent the price of agricultural products grown or produced outside of the Commonwealth. See M.G.L. c.30B, §20. The governmental body would need to develop a rule for award that clearly specifies the process of calculating the bids. To avoid disputes, the governmental body should require the submission of documentation or other information that could be used to verify that a bidder operates a Massachusetts farm or other agricultural operation.

Agriculture products: Those products defined in M.G.L. c.128, §1A, include, but are not limited to: fruits, vegetables, eggs, dairy products, meats, crops, horticultural products, as well as fish, seafood and other aquatic products.

Example: A governmental body is procuring apples. The governmental body has voted to establish a preference for products grown in Massachusetts. Two bidders submit bids for the apples. A Massachusetts farm operation, *Commonwealth Apples*, bid \$27,500, and an out-of-state farm operation, *Out-of State Apples*, bid \$25,000. Here, assuming that *Commonwealth Apples* was both responsive and responsible, *Commonwealth Apples* would be awarded the contract, as the cost does not exceed the out of state vendor's by more than 10%.